

No. 19-7069

IN THE
SUPREME COURT OF THE UNITED STATES

SAMUEL WILDER

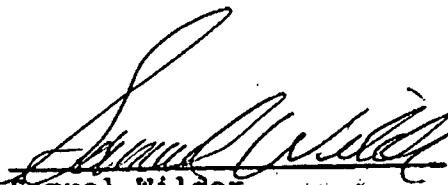
PETITIONER,

V.

WILLIAM F. KREBS, IN HIS INDIVIDUAL CAPACITY AS DENTIST AT
McCORMICK CORRECTIONAL INSTITUTION

RESPONDENT.

PETITION FOR REHEARING
IN THE SUPREME COURT OF THE UNITED STATES
TO: CHIEF JUSTICE JOHN ROBERTS


Samuel Wilder
McCormick Correctional Inst.
386 Redemption Way
McCormick, SC 29899

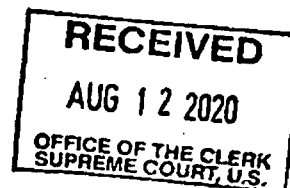


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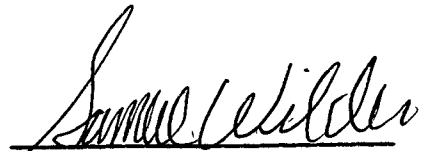
REASONS FOR GRANTING THE PETITION FOR REHEARING

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To show that the Fed R. Civ. P. are to be obeyed by attorney and pro-se, litigate alike, and to exercise this rule throughout the circuits, that a party before filing an appeal seek leave to amend by first filing, a motion to alter, set aside, or vacate the judgment pursuant to Rule 59(e) or 60(b). and then requesting leave to amend pursuant to Rule 15(a), FRCP.

CERTIFICATION

This motion for rehearing is restricted to the ground speaified in in this paragraph and that it is presented in good faith and not for delay.



STATEMENT OF THE CASE

On May 6, 2019, the Honorable Cameron McGovan Currie, published an Order granting motion for leave to file. an Amended Answer and renewed motion for summary judgment. See exhibit A. The Defendant did not file a Rule 59(e) or Rule 60(b) motion FRCP. Summary Judgment was entered for Plaintiff See exhibit (b).

The Fourth Circuit has set forth the procedure for reviewing a post judgment motion for leave to amend under Federal Rules of civil Procedure 15(a), hold that a district court may not grant the post judgment motion unless the judgment is vacated pursuant to Federal Rule of Civil Procedure 59(e). Laber v Harvey, 438 F.3d 404, 427 (4th Cir. 2005) In Laber, the court explained, there is one difference between a pre--and a post-judgment motion to amend: the district court may not grant leave the post judgment motion unless the judgment is vacated pursuant to rule 59(e) or Fed R. Civ. P. 60(b). In Scott v. Schmidt, 773 F.2d 160, 163, (U.S. Court of Appeals 7th Cir. 1985) the court stated in part, Even after the district court has entered final judgment a party may before filing an appeal seek leave to amend by first filing a motion to alter, set aside or vacate the judgment pursuant to Rule 59(e) or 60(b). and then requesting leave to amend pursuant to Rule 15(a) 6 C.A. Wright & A.R. Miller, Federal Practice and Procedure, Civil §148, pp 445-50 1971).

Plaintiff request that this Court remand to the district court.



Orders on Motions

2:17-cv-00763-CMC Wilder v.
Krebs

EXHIBIT A

COLUMBIA, PRISONER, PROSE

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 3/6/2019 at 10:22 AM EST and filed on 3/6/2019

Case Name: Wilder v. Krebs

Case Number: 2:17-cv-00763-CMC

Filer:

Document Number: 88

Docket Text:

ORDER granting [73] Motion for Leave to File. The court also grants Defendant's request to file a renewed motion for summary judgment. The Amended Answer shall be filed no later than March 11, 2019, and the summary judgment motion by March 15, 2019. Signed by Honorable Cameron McGowan Currie on 03/06/2019. (hada,)

2:17-cv-00763-CMC Notice has been electronically mailed to:

Ashley Sumner Heslop aheslop@hallboothsmith.com, mwaters@hallboothsmith.com,
psdavis@hallboothsmith.com

Jennie Marie Smith jmsmith@hallboothsmith.com

Kathleen Spencer Craig sraig@hallboothsmith.com, psdavis@hallboothsmith.com,
vramirez@hallboothsmith.com

2:17-cv-00763-CMC Notice will not be electronically mailed to:

Samuel A Wilder
258295
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

No. 19-7069

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Samuel Wilder, #258295,

Plaintiff

v.

William F. Krebs,

Defendant.

C/A. No. 2:17-763-CMC-MGB

Order

This matter is before the court on Defendant's motion for leave to file Amended Answer and Supplemental Motion for Summary Judgment. ECF No. 73. Plaintiff opposes leave to amend. ECF No. 87. Defendant has filed a reply. ECF No. 87.

Federal Rule of Civil Procedure 15(a) provides that leave to amend a pleading should be "freely give[n] . . . when justice so requires." The Fourth Circuit has held "that leave to amend a pleading should be denied only when the amendment would be prejudicial to the opposing party, there has been bad faith on the part of the moving party, or the amendment would be futile." *Edwards v. City of Goldsboro*, 178 F.3d 231, 242 (4th Cir. 1999). "Motions to amend are typically granted in the absence of an improper motive, such as undue delay, bad faith, or repeated failure to cure a deficiency by amendments previously allowed." *Harless v. CSX Hotels, Inc.*, 389 F.3d 444, 447 (4th Cir. 2004).

Given the liberal standard for amendment of pleadings, the court grants Defendant's motion for leave to file an Amended Answer. The court does not find an improper motive by Defendant in moving to amend, and it appears he may have a meritorious defense of *res judicata* or collateral estoppel. Because this defense raises a matter of law that must be determined prior to

a trial, the court also grants Defendant's request to file a renewed motion for summary judgment. The Amended Answer shall be filed no later than March 11, 2019, and the summary judgment motion by March 15, 2019.¹

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
March 6, 2019

¹ As the court has already determined summary judgment on the merits is not appropriate, the renewed motion for summary judgment shall argue the *res judicata*/collateral estoppel issue only.

EXHIBIT B

Orders on Motions

2:17-cv-00763-CMC Wilder v.
Krebs

MGB-Inmate,PROSE

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 8/23/2018 at 4:01 PM EDT and filed on 8/23/2018

Case Name: Wilder v. Krebs

Case Number: 2:17-cv-00763-CMC

Filer:

Document Number: 62

Docket Text:

OPINION AND ORDER adopting [52] Report and Recommendation of Magistrate Judge Mary Gordon Baker; denying [42] Motion for Summary Judgment. Plaintiff's § 1983 claim contains genuine issues of material fact that preclude summary judgment; therefore, Dr. Krebs' motion for summary judgment (ECF No. 42) is denied and this matter will proceed to trial. Signed by Honorable Cameron McGowan Currie on 8/23/2018.(ssam,)

2:17-cv-00763-CMC Notice has been electronically mailed to:

Ashley Sumner Heslop aheslop@hallboothsmith.com, lmoten@hallboothsmith.com,
psdavis@hallboothsmith.com

Kathleen Spencer Craig sraig@hallboothsmith.com, psdavis@hallboothsmith.com,
vramirez@hallboothsmith.com

2:17-cv-00763-CMC Notice will not be electronically mailed to:

Samuel A Wilder
258295
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

The following document(s) are associated with this transaction:

Document description:Main Document

IN THE
SUPREME COURT OF THE UNITED STATES

SAMUEL WILDER

Petitioner,


v.

William F. Krebs, in his individual capacity as Dentist at
McCormick Correctional Institution

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certify that on 5 day of August 2020. a true copy correct copy of the above Petition for rehearing has been served and address to Supreme Court of the United States, 1 First Street, NE. Washington, DC 20543 and Ashely S. Heslop. 111 Coleman Boulevard, Suite 301, Mount Pleasant, SC 29464 by depositing same in the U.S. Mail.


Samuel Wilder
MCCI
386 Redemption Way
McCormick, SC 29899